

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 13.08.2018

*CORAM

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

+W.P.(MD)No.17939 of 2018

#P.Veluchamy

... Petitioner

Vs.

\$1.The District / Divisional Forest Officer,
Dindigul District.

2.The District / Divisional Forest Officer,
Trichirappalli District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating with the order of the 1st respondent made in Na.Ka.No.2906/2018/Pa 3, dated 31.05.2018 and quash the same as it is arbitrary and illegal and in consequence to direct him to alter my date of birth from 15.06.1960 to 06.12.1963 forthwith by considering the petitioner-s application dated 04.05.2005 and to change the service register accordingly for extending the service benefits.

!For Petitioner : Mr.R.Suriya Narayanan

^For Respondents : Mr.R.Sethuraman, Spl.G.P.

:ORDER

Petitioner has come forward with the present Writ petition seeking to quash the proceedings of the 1st respondent vide Na.Ka.No.2906/2018/Pa 3, dated 31.05.2018 and for a direct to the 1st respondent to alter his date birth as 06.12.1963 instead of 15.06.1960, by considering his application dated 04.05.2005 and thereby extend the service benefits.

2.Mr.R.Sethuraman, learned Special Government Pleader takes notice for respondents. By consent, this Writ petition is taken up for final hearing at the admission stage itself.

3.According to the petitioner, he was employed as Social Forestry Worker and Plot Watcher from 1981 to 2004 and thereafter, on 03.01.2004 he was appointed as Forest Watcher by the second respondent. On attaining the age of superannuation, he retired from service on 31.05.2018. The petitioner-s further case is that his original date of birth is 06.12.1963. However, at the time of admission in school, his date of birth was given as

15.05.1960 due to illiteracy and ignorance of his parents. He studied upto Higher Secondary School level. Based on the school records, his date of birth was entered as 06.12.1963 in the service register at the time of entering into service as Forest Watcher in the respondents / Department. Hence, the petitioner submitted an application on 04.05.2005 through certificate of posting for effecting change in the date of birth. Again on 31.03.2011 the petitioner made another representation to the respondents and based on the same, the first respondent vide proceedings in Na.Ka.No.2106/2011 dated 15.11.2011 rejected the petitioner-s request. Challenging the said order, the petitioner filed a Writ petition in W.P.(MD)No.2037 of 2015. However, the same was dismissed as withdrawn on 28.04.2018.

4.The grievance of the petitioner is that his representation dated 04.05.2005 has not been considered by the respondents so far. Hence, he made another representation dated 15.05.2018 to the respondents to dispose of his application dated 04.05.2005. As the petitioner was going to retire on 31.05.2018, he constrained to move a Writ petition in W.P.(MD)No.11471 of 2018 seeking to dispose of his representation dated 04.05.2005. Accordingly, this Court by an order dated 03.05.2018 directing the 1st respondent to dispose of his representation dated 04.05.2005.

5.Pursuant thereto, the 1st respondent by order dated 31.05.2018 rejected the petitioner-s request holding that the application of the petitioner was received only on 31.03.2011 and as per Rule 49 of the Tamil Nadu Forest Service Rules, an application for altering the date of birth of an employee is to be made within five years and hence, the petitioner-s request cannot be considered as he has made the application after a period of five years.

6.The learned counsel for the petitioner submitted that as per Tamil Nadu Forest Service Rules, there is no upper age limit for direct recruitment of Forest Watcher and hence, the petitioner is entitled to get alteration in his date of birth and also for further extension of service. He further submitted that the petitioner has obtained birth certificate from Registration Department, Sanarpatti.

7.In reply, the learned Special Government Pleader appearing for the respondents submitted that the respondents have not received any such application dated 04.05.2005 from the petitioner.

8.Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

9.It is seen that the petitioner has worked as Social Forestry Worker and Plot Watcher on consolidated pay from 01.09.1981 to 2004 and thereafter, he was appointed as Forest Watcher on 03.01.2004. For proving the date of birth of a person, either his Birth Certificate or school records has to be furnished. In the case on hand, the petitioner has produced his school records showing his date of birth as 15.06.1960 and after several decades, he has produced a Certificate obtained from the Registration Department showing

his date of birth as 06.12.1963 and based on the same, he is now claiming his right to effect change in his date of birth.

11. This Court had an occasion to deal with the matter of date of birth in W.P.No.10641 of 2016. The relevant paragraph read as follows:

¶4. As per Rule 5 of the Secondary School Leaving Certificate Rules, any correction in the Date of Birth, Name or initial has to be made before completing the SSLC Examination. Therefore, the respondent has got no jurisdiction to make correction in the SSLC and HSC mark list. Though the petitioner contends that he was born on 16.01.1992 and his parents have wrongly given his date of birth as 19.01.1989 at the time of admission in the school, based on the statement of the petitioner, the Criminal Court has passed an order in CrI.MP.No.1992 of 2010 on 04.06.2010 directing the Board to issue birth certificate as if he was born on 16.01.1992. No enquiry has been conducted by the Criminal Court and the only evidence available before the Criminal Court was the statement made by the petitioner.

5. The Criminal Court has got no jurisdiction to direct the Board to issue such certificate. If that is going to be encouraged, anybody could approach the Criminal Court and correct the date of birth according to his/her convenience. This kind of issuing certificate has been discouraged by this Court. Other than the criminal court order, there is no records available to correct the date of birth of the petitioner as 16.01.1992. Even otherwise, Rule 5 of the Secondary School Leaving Certificate Rules is a bar for making correction in the school records. Therefore, the prayer sought for by the petitioner cannot be granted to the petitioner.

6. In the result, this writ petition is dismissed. No costs.¶

12. In yet another similar circumstance, this court in W.P.No.17792 of 2004, by an order dated 11.07.2017, has held as under:

¶9. Under the guise of Service Rules, alteration of date of birth is sought for. The yardstick applied in the case on hand may not be applicable in all cases. It is made clear that a person, who seeks alteration of his date of birth should have completed 15 years of age while appearing for 10th Standard Examination and if it is found that the person concerned has not satisfied the said age criteria, the employer of the person concerned can very well cancel the appointment order issued to such person and discharge him/her from service without any monetary benefits due to him/her.

10. If stringent action is taken to cancel the appointment of employees seeking alteration of date of birth, in case, the employee has not attained the minimum age to take up the qualifying examination from the School, there is a possibility of reduction of cases seeking alteration of Date of Birth.

11. The Chief Secretary to Government is directed to issue a Circular to all the Government Departments by enclosing a copy of this judgment and ensure that an employee seeking alteration of date of birth is eligible to take up S.S.L.C. examination based on his/her correct date of birth.¶

12. Though the petitioner is said to have made an Application to the respondents on 04.05.2005 through Certificate of Post, seeking alteration of his date of birth, he has not produced any record to show that he has sent the application to the respondents on the said date.

13.Further it has to be noted that even though qualification may not be a criteria for the post of Forest Watcher as per Section 49 of the Rules, the petitioner ought to have made an application for effecting change in his date of birth within a period of five years from the date of entry into service. Having not done so, the petitioner is not entitled for such claim, as it is bared by limitation. Hence, impugned order dated 31.05.2018 does not suffers from illegality.

In fine the Writ petition fails and stands dismissed. No costs.

To

1.The District / Divisional Forest Officer,
Dindigul District.

2.The District / Divisional Forest Officer,
Trichirappalli District.